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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MADISON O., a Person Coming
Under the Juvenile Court Law.

B250718
(Los Angeles County Super. Ct.
No. CK99016)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.O., et al.,

Defendants and Appellants.

APPEAL from the orders of the Superior Court of Los Angeles County, Veronica McBeth, Judge. (Retired judge of the L.A. Sup.Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Office of Robert McLaughlin and Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant M.O.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant Z.S.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and John C. Savittieri, Deputy County Counsel, for Plaintiff and Respondent.

M.O. (father) and Z.S. (mother) appeal from orders declaring their two-year-old daughter, Madison O., a dependent child under Welfare and Institutions Code section 300, subdivision (b),¹ and removing Madison from their custody under section 361, subdivision (c)(1). Mother contends the court did not articulate the facts upon which its orders are based. Both parents contend the orders are not supported by substantial evidence. We affirm the order exercising jurisdiction based on the petition allegations and dismiss as moot parents' appeal of the removal order.

STATEMENT OF FACTS AND PROCEDURE

This case came to the attention of the Department of Children and Family Services (Department) when mother and father were admitted to the hospital after a fire of undetermined and questionable origins on April 13, 2013. Parents were initially taken to a hospital in Long Beach and were transferred to Torrance Memorial Hospital, where mother tested positive for methamphetamine, amphetamines, marijuana, and opiates. Father also tested positive for cocaine and ecstasy, in addition to methamphetamine, amphetamines, marijuana, and opiates. Mother suffered burns on her arms and legs, and her burns required surgery and a two-week hospitalization.

When a social worker interviewed mother at the hospital, she claimed she was burned at a party when a fire pit blew up. When the social worker asked mother for the address where Madison was staying, mother became belligerent and hostile, refusing to disclose Madison's whereabouts and making statements like "you are not taking my baby just because I use drugs" and "social workers are crappy people with crappy jobs and all they care about is taking babies away from good mothers." When the social worker spoke with father, he stated the only drug he uses is marijuana, he cursed the social

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

worker, and he refused to bring his daughter to the Department's offices.

Later, both mother and father claimed the fire occurred in their motel room as a result of a gas leak, and that Madison was not in the room when the fire occurred. They claimed to have taken Madison to her maternal grandmother at 8:00 a.m. the morning of the fire. Maternal grandmother is a methamphetamine addict, and has had fourteen prior child welfare referrals. Mother and father admitted to using methamphetamine and marijuana in the days and weeks before the fire, but insisted the fire was not caused by cooking methamphetamine.

Mother and father began using drugs when they were teenagers, and both have multiple convictions for possession of drugs or drug paraphernalia. Mother began using methamphetamine in her teens, and became addicted and a heavy user of the drug. She has five drug-related convictions, each resulting in probation. Her most recent conviction was in 2009. Father also has a significant substance abuse history. His drug of choice was cocaine, and he spent two years in prison for possession of cocaine. Father has seven drug-related convictions.

Mother claims she stopped using methamphetamine when she met father about five years ago. When Madison was born in 2011, both mother and Madison reportedly tested positive for marijuana. The Department conducted an assessment and referred mother and father to services before closing the referral. Mother has a marijuana prescription and continued to use marijuana for pain related to Madison's birth. Mother acknowledges she snorted methamphetamine for three weeks before the fire and she felt guilty and ashamed about her relapse into using the drug. She thought father suspected she was using methamphetamine again, but she did not directly tell him about it. Father stated he was aware she "had done a line [of meth] when she went out with her girlfriends a couple of days before the fire." He downplayed her drug use, stating "She may have done it a couple of times but it's not like she has been consistently on drugs this whole time."

Father has a medical marijuana prescription and uses marijuana daily for pain related to a previous severe beating and being shot in the knee. He denied using

methamphetamine until recently, and has only used it a couple of times, including the night before the fire and the prior two weekends. He had not previously participated in formal substance abuse treatment, but has attended meetings of a twelve-step program. He is aware he has addiction issues, but feels he is in control of himself.

On April 17, 2013, the court found Madison's whereabouts unknown, but ordered her detained. After the Department located mother and advised her of the detention order, the parents cooperated and allowed the Department to detain Madison on May 30, 2013. The Department interviewed father on the same day, and he acknowledged using methamphetamine a few days earlier. At the time of the detention, Madison appeared healthy and well-cared for, and it was unknown what effect her parents' drug use had on her.

After Madison's detention, both parents agreed to participate in formal drug treatment and enrolled on June 3, 2013. Both tested positive for marijuana, but the treatment program agreed to continue treating them so long as they continued drug testing and their marijuana levels decreased over time. Letters dated June 14, 2013, from the treatment program indicate that both parents are fully participating in treatment, and that their respective therapists feel that there are underlying issues that need to be addressed, requiring a referral to a doctor and possible medical intervention. At the time of the jurisdiction hearing, mother and father had been in drug treatment for less than 30 days.

The court conducted an adjudication hearing on June 26, 2013, admitting the Department's reports into evidence and hearing testimony from mother and father. The court sustained the petition allegations, finding Madison to be a child described by subdivision (b) of section 300. As sustained, count b-1 provides "[Mother] has a history of illicit drug use and is a current abuser of methamphetamine, opiates and marijuana, which renders the mother incapable of providing the child with regular care and supervision. On 04/13/2013, the mother had a positive toxicology screen for amphetamine, methamphetamine[,] marijuana and opiates. On 04/13/2013, and on prior occasions, the mother was under the influence of illicit drugs while the child was in the

mother's care and supervision. The mother has a criminal history of two convictions of Possession of a Controlled Substance, and one conviction of Under the Influence of a Controlled Substance. Such illicit drug use on the part of the mother . . . endangers the child's physical health and safety and places the child at risk of physical harm and damage." As sustained, count b-2 states father "has a history of illicit drug use and is a current abuser of methamphetamine, ecstasy, cocaine and marijuana, which renders the father incapable of providing the child with regular care and supervision. On 04/13/2013, the father had a positive toxicology screen for amphetamine, methamphetamine, ecstasy, opiates and marijuana. On 04/13/2013, and on prior occasions, the father was under the influence of illicit drugs while the child was in the father's care and supervision. The father has a criminal history of [two] convictions of Possession of Narcotics, two convictions of Possession of a Controlled Possession[sic] of Paraphernalia, one conviction of Possession of a Controlled Substance, one conviction of Possession of Concentrated Cannabis, and one conviction of Possession[of] Marijuana for Sale. Such illicit drug use on the part of the father endangers the child's physical health and safety and places the child at risk of physical harm and damage."

In sustaining the petition allegations, the court noted that both parents tested positive for multiple drugs on the same day they claim to have taken Madison to maternal grandmother's at 8:00 in the morning, which discredits the testimony that they were never under the influence of drugs when caring for Madison. Sua sponte, the court considered amending the petition allegations to state that mother and father were current drug *users*, rather than *abusers*, but concluded their use of different drugs at the same time weighed against such an amendment.

After hearing argument as to disposition, the court removed Madison from parents' custody, stating parents would need to test drug-free for 60 days before the court would feel confident returning Madison to her parents. The court set a 60-day progress hearing as well as a 6-month review hearing.

Father and mother filed timely notices to appeal. On December 19, 2013, the court terminated its earlier disposition order and ordered Madison placed "Home of

Parents.”²

DISCUSSION

Standard of Review

“On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.]” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) We must uphold the jurisdictional findings if, “after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is substantial evidence to support the findings. [Citation.]” (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.) We resolve all conflicts in support of the determination, examine the record in a light most favorable to the dependency court’s findings and conclusions, and indulge all legitimate inferences to uphold the court’s order. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379; *In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.)

Substantial Evidence Supports a Finding of Jurisdiction under Welfare and Institutions Code Section 300, Subdivision (b)

Mother contends the court erred because it did not find, by a preponderance of the evidence, the ultimate facts upon which it based its order sustaining the petition’s allegations. Father joins mother’s contentions, but makes no separate argument on this issue in his opening brief. Both mother and father contend substantial evidence does not support the court’s jurisdictional findings. We disagree.

² On April 17, 2014, this court granted the Department’s request for judicial notice of the dependency court’s December 19, 2013 minute order.

As an appellate court, we may imply factual findings in support of the dependency court's orders, so long as there is evidence in the record to support such implied findings. (*In re Andrea G.* (1990) 221 Cal.App.3d 547, 554 [a finding may be implied when there is ample evidence supporting it].) We also presume the dependency court applied the correct evidentiary standard. Particularly at the adjudication stage, where a court makes its findings based on a preponderance of the evidence standard, there is no reason to believe appellants were prejudiced in any way by the court's failure to articulate the standard of proof. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547-550.)

Section 300, subdivision (b), provides in pertinent part: "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness." Subdivision (b) authorizes the court to exercise jurisdiction if a child is at substantial *risk* of harm, and does not prohibit jurisdiction simply because the harm has not yet materialized. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3 [dependency law "does not require a child to be actually harmed before the [Department] and the courts may intervene"].)

Without more, drug use alone is insufficient to support jurisdiction under subdivision (b) of section 300. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 768-769 (*Drake M.*).) However, jurisdiction is proper when a parent has a history of substance abuse and the evidence supports an inference that the parent's substance abuse places a child of tender years at risk based on the parent's inability to provide regular care. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210 [distinguishing *Drake M.* and affirming jurisdiction over parents with a history of drug abuse, where children were under six years old and court disbelieved parents' statements they were no longer using drugs].)

This case is distinguishable from those relied on by parents, which involved situations where there was no evidence of factors creating safety concerns for a young minor such as Madison. (See, e.g., *Drake M.*, *supra*, 211 Cal.App.4th at pp. 768-769.) The Department provided ample evidence to support the court's implied finding that Madison was at substantial risk of harm based on mother and father's substance abuse. Both parents had a lengthy history of drug abuse, with multiple convictions for drug-related crimes. Appellants argue that their past history of drug abuse was not recent enough to support jurisdiction because they deny using drugs while caring for Madison, Madison was observed to be healthy and well cared for, and parents were enrolled in a substance abuse treatment program at the time of the jurisdiction hearing. This argument ignores the facts regarding parent's credibility and poor judgment. Both parents knowingly placed their daughter in the care of a family member who is a known methamphetamine addict with multiple child welfare referrals. On the same day, they suffered a fire in the motel room where the child would normally be staying, and they tested positive for multiple drugs, including marijuana and methamphetamine. Father admitted to daily marijuana use, and both parents admitted recent use of methamphetamine. Despite father's protestations that he had never seen ecstasy, he tested positive for the drug at the hospital, and acknowledged taking methamphetamine just one day before his daughter was detained. As the court noted, it was only a matter of chance that Madison was not present in the hotel room when the fire occurred. From these facts, the dependency court could reasonably infer parents were substance abusers and their continued care of Madison put her at significant risk of harm.

The Challenge to the Removal Order is Moot

Mother and father also appeal from the disposition order removing Madison from their custody, contending substantial evidence does not support the court's decision. Mother also contends the court erroneously failed to make findings supporting its order. (§ 361, subd. (c)(1).) Father joins in any argument from mother's brief that inures to his

benefit, but father does not make a separate argument regarding the court's findings in support of its removal order.

After this appeal was filed, we granted the Department's motion for judicial notice of the dependency court's December 19, 2013 order terminating the suitable placement order and placing Madison in the home of her parents. The Department contends that we need not review the removal order because it has been rendered moot. We agree that the parents' appeal of the removal order is moot, since Madison is no longer removed from her parents.

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. [Citation.]" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) Madison has returned to her parents; therefore, any ruling regarding the propriety of the removal order can have no practical impact or grant the parties effective relief. (*Id.* at p. 1490.) Father argues the appeal is not moot because the court's December 19, 2013 order only addressed Madison's *placement* with parents, rather than restoring full legal and physical *custody*, leaving a material question for this court to determine. Mother joins in this argument, but does not offer any independent analysis. Father does not identify any collateral consequences or prejudice resulting from the court's orders. We therefore decline to address the parents' challenge to the court's removal order.

DISPOSITION

The dependency court's order exercising jurisdiction under section 300, subdivision (b) is affirmed. Parents' appeal of the court's removal order is dismissed as moot.

KRIEGLER, J.

We concur:

MOSK, Acting P. J.

MINK, J. *

* Retired judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.